Q–1: Are fringe benefits included in the definition of ''wages'' under section 3401(a)?

A–1: Yes, unless specifically excluded from the definition of ''wages'' pursuant to section 3401(a) (1) through (20). For example, a fringe benefit provided to or on behalf of an employee is excluded from the definition of ''wages'' if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

[T.D. 8004, 50 FR 756, Jan. 7, 1985]

§ 31.3401(a)–2 Exclusions from wages.

(a) *In general.* (1) The term ''wages'' does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under section 3401(a).

(2) The exception attaches to the remuneration for services performed by an employee and not to the employee as an individual; that is, the exception applies only to the remuneration in an excepted category.

Example. A is an individual who is employed part time by B to perform domestic service in his home (see § 31.3401(a)(3)–1). A is also employed by C part time to perform services as a clerk in a department store owned by him. While no withholding is required with respect to A's remuneration for services performed in the employ of B (the remuneration being excluded from wages), the exception does not embrace the remuneration for services performed by A in the employ of C and withholding is required with respect to the wages for such services.

(3) For provisions relating to the circumstances under which remuneration which is excepted is nevertheless deemed to be wages, and relating to the circumstances under which remuneration which is not excepted is nevertheless deemed not to be wages, see § 31.3402(e)–1.

(4) For provisions relating to payments with respect to which a voluntary withholding agreement is in effect, which are not defined as wages in section 3401(a) but which are nevertheless deemed to be wages, see §§ 31.3401(a)–3 and 31.3402(p)–1.

(b) *Fees paid a public official.* (1) Authorized fees paid to public officials such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are excepted from wages and hence are not subject to withholding. However, salaries paid such officials by the Government, or by a Government agency or instrumentality, are subject to withholding.

(2) Amounts paid to precinct workers for services performed at election booths in State, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6654, 28 FR 5251, May 28, 1963; T.D. 7096, 36 FR 5216, Mar. 18, 1971]

§ 31.3401(a)–3 Amounts deemed wages under voluntary withholding agreements.

(a) *In general.* Notwithstanding the exceptions to the definition of wages specified in section 3401(a) and the regulations thereunder, the term ''wages'' includes the amounts described in paragraph (b)(1) of this section with respect to which there is a voluntary withholding agreement in effect under section 3402(p). References in this chapter to the definition of wages contained in section 3401(a) shall be deemed to refer also to this section (§ 31.3401(a)–3).

(b) *Remuneration for services.* (1) Except as provided in subparagraph (2) of this paragraph, the amounts referred to in paragraph (a) of this section include any remuneration for services performed by an employee for an employer which, without regard to this section, does not constitute wages under section 3401(a). For example, remuneration for services performed by an agricultural worker or a domestic worker in a private home (amounts which are specifically excluded from the definition of wages by section 3401(a) (2) and (3), respectively) are amounts with respect to which a voluntary withholding agreement may be entered into under section 3402(p). See §§ 31.3401(c)–1 and 31.3401(d)–1 for the definitions of ''employee'' and ''employer''.